IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1113 OF 2005

M. S. R. T. Corporation. ...Petitioner.
Versus
Mr.Amardip D. Mishra, Asstt. P.F.
Commissioner (Exem) & Ors. ...Respondents.

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Mr. C.U. Singh i/b. Chitnis Vaity for the Petitioner.
Mr. R.J. Mane, AGP for Respondent No.4.

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CORAM : DR. D.Y. CHANDRACHUD, J.

May 2, 2005.

P.C.:

1. Notice has been issued in this petition for hearing and final disposal at the stage of admission. Counsel appearing on behalf of the Petitioner states that the Respondents have been served on 29th April 2005 and undertakes to file an affidavit of service within a period of one week from today.

2. This petition seeks to impugn an order dated 11th March

2005 passed by the Employees' Provident Fund Appellate Tribunal at New Delhi, on an application for waiver of the condition of deposit under the proviso to Section 7(O) of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

3. The Petitioner is a State Road Transport Corporation formed under Section 3 of the State Road Transport Corporation Act, 1950. The aforesaid Act is an Act of Parliament. Section 19(1)(c) of the Act provides inter alia that the Corporation shall have power to provide to its employees suitable conditions of service, including fair wages, establishment of provident fund, living accommodation, places of rest, recreation and other amenities. On 23rd September 1970, an exemption was granted to the establishment of the Petitioner under Section 17(1)(a). On 1st August 1988, the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 was amended inter alia so as to incorporate clauses (b) and (c) of sub-section 1 of Section 16. As amended, Section 16(1) provides as follows :

"Section 16(1)(b) and (c):

Act not to apply to certain establishments:- (1) This Act shall not apply -

-(b) to any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits;

-(c) to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under the Act governing such benefits."

4. The contention of the Petitioner is that the provisions of the Act became inapplicable by virtue of the provisions of clauses (b) and (c) of Sub-section (1) of Section 16. The Petitioner, it would appear,

had addressed a letter on 22nd August 1989 by way of abundant caution to the State Government for confirming that in view of the amended provision, the Act shall not be applicable. The State Government by its letter dated 9th April 1991 confirmed that the Act was not applicable to the Petitioner in view of the amendment which took effect in 1988. In the meantime, several meetings took place with the Provident Fund authorities and it appears that the Petitioner was advised to continue compliance with the provisions of the Act pending a final decision by the authorities constituted under the Act. On 16th November 1995, the Employees' Pension Scheme was introduced under the provisions of the Act and the Petitioner had expressed its willingness to comply with the provisions of the Act in relation to the Scheme. A proposal was submitted by the Petitioner on 13th March 1996. However, on 5th October 2001, the Petitioner was informed by the Regional Provident Fund Commissioner that the proposal for voluntary coverage under Section 1(4) had not been approved by the Competent Authority.

5. In January 2005, proceedings were initiated against the

Petitioner by the Provident Fund authorities under Section 7A of the Act for the recovery of inspection charges payable in respect of the Provident Fund and Employees' Deposit Linked Insurance Scheme for the period March 1990 to October 2004. An order was passed by the Assistant Provident Fund Commissioner on 20th January 2005 requiring the Petitioner to pay a total amount of Rs.11,04,54,040/- an interest in the amount of Rs.3,40,20,467/- under Section 7Q of the Act. This order was challenged by the Petitioner in appeal. During the pendency of the appeal, the Petitioner applied for waiver of the condition of depositing 75% of the amount determined under the proviso to Section 7(O). That application has been disposed of by the impugned order dated 11th March 2005. The Appellate Tribunal has directed the Petitioner to deposit an amount of 25%.

6. Counsel appearing on behalf of the Petitioner has submitted that a complete waiver of deposit ought to have been granted to the Petitioner, having regard to the fact that by the operation of law, by virtue of the provisions of Section 16(1)(b) and (c) as amended with effect from 1st August 1988, the provisions of the

Act ceased to apply to the Petitioner. Moreover, it was urged that the conduct of the Petitioner would show that even thereafter, the Petitioner has sought a clarification in good faith in regard to the non-application of the provisions of the Act. The Petitioner in fact, sought voluntary coverage under the Family Pension Scheme, but an approval was declined by the authority on 5th March 2001.

7. Having heard Counsel appearing on behalf of the Petitioner, I am of the view that this is a fit and proper case where the appeal should be directed to be disposed of by the Appellate Tribunal without any condition of deposit. Section 16(1)(b) of the Act inter alia provides that the Act shall not apply to any of the establishments belonging to or under the control of Central or State Government whose employees are entitled to the benefits of Contributory Provident Fund or Old Age Pension in accordance with any Scheme framed by the Central Government or State Government. Similarly, Section 16(1)(c) of the Act provides that the Act shall not apply to any other establishment set up under any Central, Provincial or State Act whose employees are entitled to the benefits of contributory Provident

Fund or Old Age Pension in accordance with any scheme or rule framed under the Act. In the present case, the Petitioner has been set up under an Act of Parliament. The employees of the Petitioner, it has been stated before the Court, are entitled to the benefits of Contributory Provident Fund in accordance with a scheme framed under the Act governing the grant of such benefits. In these circumstances, particularly having regard to the fact that the Petitioner is a Public Sector Undertaking to whom the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 appear not to be applicable, a case for waiver of the requirement of pre-deposit would be warranted in the interests of justice. These are, however, prima facie observations confined to the question of deposit.

8. In these circumstances, this petition is allowed by setting aside the impugned order of the Tribunal dated 11th March 2005. The application for waiver of pre-deposit under the proviso to Section 7 (O) shall accordingly stand granted. The Tribunal is directed to dispose of the appeal without insisting on the requirement of pre-deposit. However, it is clarified that the observations contained in this

order are confined only to the question as to whether a case for waiver of pre-deposit is made out. The Tribunal shall decide the appeal on the merits of the issues which arise before it. The petition is disposed of. There shall be no order as to costs.

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